NEW COMMERCIAL COURTS IN ENGLAND. — The expense and delay of mercantile litigation is a common and not unjustified source of complaint among business men, who feel that deterring suitors from enforcing their rights through a fear that justice will cost more than it is worth is hardly a legitimate application of the maxim that it is the policy of the law to discourage litigation. Some properly authorized method of judicial arbitration has been the remedy most frequently suggested. Some time ago England provided for the settlement of large classes of actions by private arbitration under certain regular rules; but after a full trial the system has given much less relief than was expected. The judicial inexperience of lay arbitrators, their lack of coercive power, their tendency to compromise, and the difficulty of avoiding appealable irregularities in their proceedings have shown that arbitration is successful only within narrow limits.

In consequence of this failure, what is called a Commercial Court has just been established, solely to determine mercantile disputes. It is intended to combine the authority and experience of an able judge with an elastic procedure adapted to the prompt settlement of actions. It certainly seems more sensible to shape the public tribunals of justice to existing needs than to shift the burden to the shoulders of private arbitration, and the importance of this latest experiment is by no means confined to the country making it.

COMPARATIVE LEGISLATION. — That neat and useful little summary of State legislation in 1894 in the New York State Library Bulletin, is now at hand, and gives, as usual, a concise and comprehensive view of its subject. A glance at the array of material suggests how much food for reflection lies in this topic, and how inadequately treated it usually is. It is, perhaps, not surprising that the ordinary lawyer, rushed with business, should content himself with noticing only the statutory changes in the law of the jurisdiction in which he practises, but it certainly is somewhat to be regretted. Such summaries as these, and such addresses as Judge Cooley's at the meeting of the American Bar Association in 1894, call attention only too unmistakably to the importance and the past neglect of the study of comparative contemporaneous legislation.

BANKER'S LIEN. — A recent decision in Kentucky is of interest as a new authority on an old and much disputed question in the law of banker's lien. The facts of the case were these. A bank discounted and held a note, and at the maturity thereof held on general deposit for the maker a sum sufficient to pay the note. It permitted this sum to be checked out, and the question was whether the defendant, a surety on the note, was thereby discharged. Defendant had signed the note, which presumably was a joint and several one, as a co-maker, but the bank knew that he was only a surety. The Court of Appeals of Kentucky held that the surety was discharged. *Pursifull* v. *Pineville Banking Co.'s Assignee*, 30 S. W. R. 203. The authorities are irreconcilable, but it is believed that on principle the decision is perfectly sound. In *accord* with it are *McDowell* v. *Bank of Wilmington*, 1 Harrington (Del.), 369; *Bank* v. *Henninger*, 105 Pa. St. 496. And see Morse, Banks and Banking, 3d ed. § 503. The opposite view is taken in *Bank* v. *Hill*,

76 Ind. 223; *Voss* v. *Bank*, 83 Ill. 599; *Martin* v. *Bank*, 6 Har. & J. 235; *Bank* v. *Peck*, 127 Mass. 298 (*obiter*).

It is of course well settled that in cases of this sort the bank may, if it chooses, refuse to pay so much of its debt to the depositor as will equal the debt which the depositor in turn owes the bank. If this right of refusing to pay, which is sometimes called a set-off and sometimes a lien, is a genuine lien, it would seem to follow that the bank, by voluntarily paying the depositor's claim, relinquished a lien, and so discharged a surety on the depositor's note, in like manner as the relinquishment of any other security would discharge a surety. May not this right of refusing to pay the depositor's claim very properly be regarded as a lien — a lien on the claim? It gives the bank the right of retaining control over the claim for the purpose of security, and such a right, when given by law over the property of another, is certainly very similar to a lien. To be sure it is a lien on a *chose in action*, but that does not seem to be an insuperable difficulty. A stock certificate is a *chose in action*, and clearly the bank would have a lien on a stock certificate deposited with it, even if the certificate happened to be one of its own, and so, as in the principal case, a claim against the bank itself. The only difference, so far as is perceived, between the case of the stock-certificate and the principal case, is that in the latter there is no formal assignment to the bank of the depositor's claim, the *chose in action*. But as the law has already given the bank power to deal with the claim for its security in like manner as if it had been assigned, a formal act of assignment does not seem to be called for.

If it be conceded that the banker's right of control over the depositor's claim is a lien on the claim, there would seem to be no difficulty on principle with the Kentucky decision; for payment of the claim would clearly be a relinquishment of the lien, and so a discharge of the surety. That the result which the case reaches is a desirable one from the standpoint of justice and convenience seems hardly open to question. If the bank wishes to be polite, and honor its depositor's checks regardless of the state of accounts between them, it ought not to call on the surety to make good the resulting loss.

STATUTE OF LIMITATIONS. — An interesting point, apparently a novel one in this country, has arisen in the Pennsylvania courts (*Lewey* v. *Frick Coke Co.*, 31 Atl. Rep. 261). The defendant company mined coal under the plaintiff's land, inadvertently it would seem, though the report is not clear. For seven years the plaintiff had no means of discovering the defendant's act. The defendant, in an action of trespass, set up the Statute of Limitations. The court, in its alternative capacity of court of equity, treated the action as though the plaintiff had brought a bill of account for coal taken; and declined to apply the Statute of Limitations on the ground that before a plaintiff has had reasonable means of discovering the existence of his cause of action, equity will not allow the Statute of Limitations to operate as a bar to his suit. The court satisfactorily distinguishes an underground trespass, with its exceptional characteristics, and its difficulty, often impossibility, of speedy discovery, from a surface trespass, where the owner of the close is held to know, constructively at least, of any invasion of his boundaries. Some hesitation may be felt in admitting the propriety of allowing a bill of account for coal taken with-